

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 645 of 1985

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

SURJAN SINGH SUKHRAM RATHI

Versus

UNION OF INDIA

Appearance:

MR BB NAIK for Petitioner

MS SAFAYA ADDL.CENTRAL STANDING COUNSEL
for Res.No.1.

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 12/12/97

ORAL JUDGEMENT

Learned advocate Mr. B.B.Naik appearing for the petitioner is not present on call. I am informed that the learned Additional Central Government Standing Counsel Ms.Safaya appears for the respondent, however, she too is not present on call.

This petition arises of a claim for pension made

by the former Military employee who was discharged from service in the year 1955. It appears that the petitioner was enrolled in Military service on 14th May, 1940. Before he attained the age of 16 years. The petitioner was promoted to the post of Subedar (Junior Commissioned Officer). It appears that the petitioner was not qualified to hold the post of Subedar for want of requisite educational qualification. He was, therefore, required to be reverted to the post of Havildar on 16th August, 1955. However, he was informed that in the event he did not choose to be reverted to the lower cadre, he may opt for discharge from Military service. The petitioner opted for discharge from Military service and, thus, was discharged from service with effect from 16th August, 1955. The petitioner has preferred this petition in the year 1985 i.e. 30 years after his discharge from Military service and has claimed that he had rendered 16 years' Military service and he is entitled to receive pension for such service. In reply to the petition, an affidavit has been made on behalf of the respondent. It is stated that the petitioner was enrolled on 14th May, 1940 before he attained the age of 16 years. In view of the prevalent rules, services rendered before completion of 16 years of age, is not considered pensionable service. The petitioner attained the age of 16 years on 14th May, 1941. Thus, the services rendered from 14th May, 1941 to 15th August, 1955 is the pensionable service, which falls short of the required minimum service of 15 years by 272 days. Thus, the petitioner has not completed 15 years' qualifying service to earn pension. In view of Rule 217 of the Pension Regulations, Part-II, 1940, the competent authority has power to condone deficiency in service upto six months. Short-fall in petitioner's qualifying service being more than six months, the petitioner can not be granted benefit of pension even after condoning the short-fall in qualifying service upto six months. Further, at the time of discharge, the petitioner was granted service gratuity in accordance with the Rules. The matter was also referred to the Government for condonation of 272 days' short-fall in qualifying service of the petitioner. However, under communication dated 23rd March, 1985, the said application was rejected.

In view of the above facts, I am of the opinion that the petition requires to be rejected. Primarily, the petition is grossly belated i.e. the present petition has been preferred 30 years after the petitioner was discharged from the Military service. Secondly, in view of the rules regulating the pension to the Military personnel, the petitioner is not entitled to the pension

as claimed by him. It may also be noted that in the year 1970, the petitioner applied for change in the date of birth entered in his service record, which too was rejected. The petitioner's claim that in fact at the time of his enrollment in the Military service his age was that of 18 years, can not be accepted at this stage. The petitioner has been granted the benefit of service gratuity.

In view of the above discussion, the petition is dismissed. Rule is discharged. There shall be no order as to costs.

JOSHI *****